

Senate Bill No. 660

Passed the Senate September 11, 2015

Secretary of the Senate

Passed the Assembly September 10, 2015

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2015, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 308, 309.6, 1701.1, 1701.2, 1701.3, 1701.4, and 1701.5 of, and to add Sections 305.5, 307.5, 1701.6, 1701.7, and 1701.8 to, the Public Utilities Code, relating to the Public Utilities Commission.

LEGISLATIVE COUNSEL'S DIGEST

SB 660, Leno. Public Utilities Commission.

(1) The California Constitution establishes the Public Utilities Commission, with jurisdiction over all public utilities. The California Constitution grants the commission certain general powers over all public utilities, subject to control by the Legislature, and authorizes the Legislature, unlimited by the other provisions of the California Constitution, to confer additional authority and jurisdiction upon the commission that is cognate and germane to the regulation of public utilities. Existing law requires the Governor to designate the president of the commission from among its members and requires the president to direct the executive director, the attorney, and other staff of the commission, except for the Office of Ratepayer Advocates.

This bill would authorize the commission to delegate specific management and internal oversight functions to committees composed of 2 commissioners. The bill would require the commission to appoint a chief administrative law judge who would be responsible for the oversight of the administrative law judge division and would require the chief administrative law judge to organize, coordinate, supervise, and direct the operations of the administrative law judge division as directed by the commission, consistent with commission policies and priorities.

Existing law requires the executive director to keep a full and true record of all proceedings of the commission.

This bill would delete that requirement and would instead require the chief administrative law judge to keep a full and true record of all proceedings of the commission.

(2) Existing law requires the commission, upon initiating a hearing, to assign one or more commissioners to oversee the case and an administrative law judge, where appropriate. Existing law

requires the assigned commissioner to prepare and issue, by order or ruling, a scoping memo that describes the issues to be considered and the applicable timetable for resolution. Existing law requires the commission to adopt procedures on the disqualification of administrative law judges due to bias or prejudice similar to those of other state agencies and superior courts.

This bill would require the commission to additionally adopt procedures on disqualification of commissioners due to bias or prejudice similar to those of other state agencies and superior courts. For ratesetting or adjudicatory proceedings, the bill would require a commissioner or an administrative law judge to be disqualified for bias or prejudice based on specified criteria. The bill would require that the commission procedures prohibit a commissioner or administrative law judge from ruling on a motion made by a party to a proceeding to disqualify the commissioner or administrative law judge due to bias or prejudice.

(3) The Public Utilities Act requires the commission to determine whether a proceeding requires a hearing and, if so, to determine whether the matter requires a quasi-legislative, an adjudication, or a ratesetting hearing. For these purposes, quasi-legislative cases are cases that establish policy rulemakings and investigations, which may establish rules affecting an entire industry, adjudication cases are enforcement cases and complaints, except those challenging the reasonableness of any rates or charges, and ratesetting cases are cases in which rates are established for a specific company, including general rate cases, performance-based ratemaking, and other ratesetting mechanisms. The act regulates communications in hearings before the commission and defines “ex parte communication” to mean any oral or written communication between a decisionmaker and a person with an interest in a matter before the commission concerning substantive, but not procedural, issues that does not occur in a public hearing, workshop, or other public proceeding, or on the official record of the proceeding on the matter. Existing law defines “person with an interest” to mean, among other things, a person with a financial interest in a matter before the commission, or an agent or employee of the person with a financial interest, or a person receiving consideration for representing the person with a financial interest. Existing law requires the commission, by regulation, to adopt and publish a definition of the terms “decisionmaker” and “persons”

for those purposes, along with any requirements for written reporting of ex parte communications and appropriate sanctions for noncompliance with any rule proscribing ex parte communications. The act provides that ex parte communications are prohibited in adjudication cases and are prohibited in ratesetting cases, with certain exceptions. The act requires that ex parte communications be permitted in quasi-legislative cases, without any restrictions. The commission's Rules of Practice and Procedure define a "decisionmaker" as any commissioner, the Chief Administrative Law Judge, any Assistant Chief Administrative Law Judge, the assigned administrative law judge, or the Law and Motion Administrative Law Judge. The Rules of Practice and Procedure provide that communications with a commissioner's personal advisors are subject to all of the restrictions on, and reporting requirements applicable to, ex parte communications, except that oral communications with an advisor in ratesetting proceedings are permitted without the restrictions.

This bill would require that the commission determine whether every proceeding, not just those requiring a hearing, is a quasi-legislative, adjudication, or ratesetting proceeding. The bill would delete the provision that an ex parte communication concerns a substantive, but not a procedural matter, and instead would provide that an ex parte communication concerns any matter that the commission has not specified in its Rules of Practice and Procedure as being a procedural matter and that does not occur in a public hearing, workshop, or other public proceeding, or on the official record of the proceeding on the matter. The bill would prohibit the commission from considering as a procedural matter communications between an interested person and a decisionmaker regarding which commissioner or administrative law judge may be assigned to a matter before the commission. The bill would define a person involved in issuing credit ratings or advising entities or persons who may invest in the shares or operations of any party to a proceeding as an interested person. The bill would require that the commission, by rule, adopt and publish a definition of decisionmakers, that would be required to include certain individuals in the commission. The bill would require the commission to establish and maintain a communications log summarizing all oral or written ex parte communications that occur between an interested person and any decisionmaker. The bill

would require the commission to post the communications log on its Internet Web site.

This bill would require that a decisionmaker, in an adjudication or ratesetting case, who makes or receives a prohibited ex parte communication, or who receives an ex parte communication that was not timely reported, to disclose certain information regarding the communication in the record of the proceeding before the commission takes a vote on the matter. If a prohibited ex parte communication is not disclosed until after the commission has issued a decision on the matter to which the communication pertained, a party not participating in the communication would be authorized to file a petition to rescind or modify the decision. The bill would require the commission to render decisions based upon the record in a case and would provide that an ex parte communication not be part of the record of the proceeding.

This bill would provide that ex parte communications are permitted in quasi-legislative proceedings, but would require that they be reported within 3 working days in the communications log maintained by the commission.

This bill would require the commission to additionally prohibit communications concerning procedural issues in adjudication cases between parties or persons with an interest and decisionmakers, except for the assigned administrative law judge.

Under existing law, the exceptions to the prohibition upon ex parte communications in ratesetting proceedings authorize a commissioner to permit oral ex parte communications if all interested parties are invited and given not less than 3 days' notice. If an ex parte communication meeting is granted to any party, it is required that all other parties also be granted individual ex parte meetings of a substantially equal period of time and that all parties be sent a notice of that authorization at the time the request is granted, at least 3 days prior to the meeting. The exceptions authorize a commissioner to permit written ex parte communications by any party provided that copies of the communication are transmitted to all parties.

This bill would delete the requirement that if an ex parte communication meeting is granted to any party in a ratesetting proceeding, that all other parties also be granted individual ex parte meetings of a substantially equal period of time and that all parties be sent a notice of that authorization at the time the request is

granted, at least 3 days prior to the meeting. The bill would prohibit oral communications concerning procedural matters in ratesetting cases between parties or persons with an interest and decisionmakers other than the assigned administrative law judge, except that a commissioner would be authorized to permit an oral communication relative to procedural matters if all interested parties are invited and given not less than 3 days' notice. The bill would prohibit written *ex parte* communications concerning procedural matters in ratesetting cases between parties or persons with an interest and decisionmakers other than the assigned administrative law judge, except that a commissioner would be authorized to permit a written communication relative to procedural issues by any party provided that copies of the communication are transmitted to all parties on the same day.

This bill would expressly make the prohibitions upon *ex parte* communications that relate to adjudicatory or ratesetting proceedings applicable to *ex parte* communications that occur at conferences, as defined. The bill would also make the requirements that pertain to *ex parte* communications that relate to quasi-legislative proceedings applicable to *ex parte* communications that occur at conferences.

This bill would authorize the commission to impose civil sanctions, including civil penalties, on any entity or person, other than a decisionmaker or employee of the commission, that violates *ex parte* communication requirements. The bill would authorize the Attorney General to bring an enforcement action in the Superior Court of the City and County of San Francisco against a decisionmaker or employee of the commission who violates the *ex parte* communication requirements.

This bill would incorporate additional changes in Section 308 of the Public Utilities Code, proposed by SB 48, to be operative only if SB 48 and this bill are both chaptered and become effective on or before January 1, 2016, and this bill is chaptered last.

Under existing law, a violation of the Public Utilities Act or any order, decision, rule, direction, demand, or requirement of the commission is a crime.

Because the provisions of this bill would be a part of the act and because a violation of an order or decision of the commission implementing its requirements would be a crime, the bill would

impose a state-mandated local program by expanding the application of a crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 305.5 is added to the Public Utilities Code, to read:

305.5. The commission may delegate specific management and internal oversight functions to committees composed of two commissioners. Committees shall meet regularly with staff and shall report to the commission for additional guidance or approval of decisions pertaining to the operations of the commission.

SEC. 2. Section 307.5 is added to the Public Utilities Code, to read:

307.5. (a) The commission shall appoint a chief administrative law judge, who shall hold office at the pleasure of the commission.

(b) The chief administrative law judge shall be responsible for the oversight of the administrative law judge division and shall organize, coordinate, supervise, and direct the operations of the division as directed by the commission, consistent with commission policies and priorities.

(c) The chief administrative law judge shall keep a full and true record of all proceedings of the commission.

SEC. 3. Section 308 of the Public Utilities Code is amended to read:

308. (a) The commission shall appoint an executive director, who shall hold office during its pleasure. The executive director shall be responsible for the commission's executive and administrative duties and shall organize, coordinate, supervise, and direct the operations and affairs of the commission and expedite all matters within the commission's jurisdiction.

(b) The executive director shall issue all necessary process, writs, warrants, and notices, and perform any other duties as the commission prescribes. The president or, by vote, the commission

may authorize the executive director to dismiss complaints or applications when all parties are in agreement thereto, in accordance with rules that the commission may prescribe.

(c) The commission may appoint assistant executive directors who may serve warrants and other process in any county or city and county of this state.

SEC. 3.5. Section 308 of the Public Utilities Code is amended to read:

308. (a) The commission shall appoint an executive director, who shall hold office during its pleasure. The executive director shall be responsible for the commission's executive and administrative duties and shall organize, coordinate, supervise, and direct the operations and affairs of the commission and expedite all matters within the commission's jurisdiction.

(b) The executive director shall issue all necessary process, writs, warrants, and notices, and perform any other duties the commission prescribes. The commission may authorize the executive director to dismiss complaints or applications when all parties are in agreement thereto, in accordance with rules that the commission may prescribe.

(c) The commission may appoint assistant executive directors who may serve warrants and other process in any county or city and county of this state.

SEC. 4. Section 309.6 of the Public Utilities Code is amended to read:

309.6. (a) The commission shall adopt procedures on the disqualification of commissioners and administrative law judges due to bias or prejudice similar to those of other state agencies and superior courts.

(b) (1) For ratesetting and adjudicatory proceedings, a commissioner or administrative law judge shall be disqualified for bias or prejudice based on any of the following:

(A) Actions taken during the proceeding.

(B) Private communications before the commencement of the proceeding to influence the request for relief sought by any party to the proceeding.

(C) Actions demonstrating any commitment to provide relief to a party.

(2) Past work experience by the commissioner or administrative law judge shall not be a sufficient basis for demonstrating bias or prejudice pursuant to paragraph (1).

(c) The commission procedures shall prohibit a commissioner or administrative law judge from ruling on a motion made by a party to a proceeding to disqualify the commissioner or administrative law judge due to bias or prejudice.

(d) The commission shall develop the procedures with the opportunity for public review and comment.

SEC. 5. Section 1701.1 of the Public Utilities Code is amended to read:

1701.1. (a) The commission shall determine whether each proceeding is a quasi-legislative, an adjudication, or a ratesetting proceeding and, consistent with due process, public policy, and statutory requirements, determine whether the proceeding requires a hearing. The commission's decision as to the nature of the proceeding shall be subject to a request for rehearing within 10 days of the date of that decision. If that decision is not appealed to the commission within that time period it shall not be subsequently subject to judicial review. Only those parties who have requested a rehearing within that time period shall subsequently have standing for judicial review and that review shall only be available at the conclusion of the proceeding. The commission shall render its decision regarding the rehearing within 30 days. The commission shall establish rules regarding ex parte communication on case categorization issues.

(b) The commission upon initiating an adjudication proceeding or ratesetting proceeding shall assign one or more commissioners to oversee the case and an administrative law judge where appropriate. The assigned commissioner shall schedule a prehearing conference. The assigned commissioner shall prepare and issue by order or ruling a scoping memo that describes the issues to be considered and the applicable timetable for resolution. The administrative law judge shall either preside and conduct, or assist the assigned commissioner or commissioners in presiding and conducting, any evidentiary or adjudication hearing that may be required.

(c) The commission upon initiating a quasi-legislative proceeding shall assign one or more commissioners to oversee the case and an administrative law judge, where appropriate, who may

be assisted by a technical advisory staff member in conducting the proceeding. The assigned commissioner shall prepare and issue by order or ruling a scoping memo that describes the issues to be considered and the applicable timetable for resolution.

(d) (1) Quasi-legislative cases, for purposes of this article, are cases that establish policy, including, but not limited to, rulemakings and investigations which may establish rules affecting an entire industry.

(2) Adjudication cases, for purposes of this article, are enforcement cases and complaints except those challenging the reasonableness of any rates or charges as specified in Section 1702.

(3) Ratesetting cases, for purposes of this article, are cases in which rates are established for a specific company, including, but not limited to, general rate cases, performance-based ratemaking, and other ratesetting mechanisms.

(4) “All-party conference,” for purposes of this article, is a public hearing held on the record before a quorum of commissioners at which parties to a proceeding shall have the right to participate and let their views be heard regarding any factual, legal, or policy issue in the proceeding.

(e) (1) (A) “Ex parte communication,” for purposes of this article, means any oral or written communication between a decisionmaker and an interested person concerning any matter before the commission that the commission has not specified in its Rules of Practice and Procedure as being a procedural matter and that does not occur in a public hearing, workshop, or other public proceeding, or on the official record of the proceeding on the matter. The commission shall specify in its Rules of Practice and Procedure, enacted by rulemaking, the types of issues considered procedural matters under this article. Any communication between an interested person and a decisionmaker regarding which commissioner or administrative law judge may be assigned to a matter before the commission shall not be deemed to be a procedural matter and shall be an ex parte communication subject to this article.

(B) “Interested person,” for purposes of this article, means any of the following:

(i) Any applicant, an agent or an employee of the applicant, or a person receiving consideration for representing the applicant, or a party to the proceeding on any matter before the commission.

(ii) Any person with a financial interest, as described in Article 1 (commencing with Section 87100) of Chapter 7 of Title 9 of the Government Code, in a matter before the commission, or an agent or employee of the person with a financial interest, or a person receiving consideration for representing the person with a financial interest. A person involved in issuing credit ratings or advising entities or persons who may invest in the shares or operations of any party to a proceeding is a person with a financial interest.

(iii) A representative acting on behalf of any civic, environmental, neighborhood, business, labor, trade, or similar organization who intends to influence the decision of a commission member on a matter before the commission.

(iv) Other categories of individuals deemed by the commission, by rule, to be an interested person.

(2) The commission shall by rule adopt and publish a definition of decisionmakers and interested persons for purposes of this article, along with any requirements for written reporting of ex parte communications and appropriate sanctions for noncompliance with any rule proscribing ex parte communications. The definition of decisionmakers shall include, but is not limited to, each commissioner; the attorney for the commission; the executive director of the commission; the personal staff of a commissioner if the staff is acting in a policy or legal advisory capacity; the chief administrative law judge of the commission; and the administrative law judge assigned to the proceeding.

(3) For adjudication and ratesetting cases, the rules shall provide that ex parte communications shall be prohibited, as required by this article. The rules shall provide that if an ex parte communication occurs that is prohibited by this article, whether initiated by a decisionmaker or an interested person, all of the following shall be required:

(A) The interested person shall report the communication within one working day of the communication by filing a notice with the commission that includes all the following:

(i) The date, time, and location of the communication, whether the communication was oral, or written, or a combination of both, and the communication medium utilized.

(ii) The identity of the decisionmaker, the identity of the person initiating the communication, and any other persons present.

(iii) A complete and comprehensive description of the interested person's and the decisionmaker's communication and its content.

(iv) A copy of any written material or text used during the communication.

(B) Any decisionmaker who participated in the communication shall comply with both of the following:

(i) If the interested person who participated in the communication has not timely submitted the notice required by subparagraph (A), the decisionmaker shall promptly prepare and file a notice that includes the information required by subparagraph (A).

(ii) If the interested person has timely submitted the notice required by subparagraph (A), the decisionmaker shall either promptly file a notice affirming the factual representations made by the interested person in the notice or promptly file a notice correcting or supplementing the factual representations made by the interested person.

(4) The commission shall not take any vote on a matter where a notice has been filed pursuant to subparagraph (A) or (B) of paragraph (3) until all parties to the proceeding have been provided a reasonable opportunity to respond to the communication.

(5) If a prohibited ex parte communication is not disclosed as required by this subdivision until after the commission has issued a decision on the matter to which the prohibited communication pertained, a party not participating in the communication may file a petition to rescind or modify the decision. The party may seek a finding that the ex parte communication was prohibited and significantly influenced the decision's process or outcome as part of any petition to rescind or modify the decision. The commission shall process the petition in accordance with the commission's procedures for petitions for modification and shall issue a decision on the petition no later than 180 days after the filing of the petition.

(6) (A) Ex parte communications that occur at conferences that are related to an adjudication or ratesetting proceeding shall be prohibited consistent with the ex parte communications requirements of this article.

(B) Ex parte communications that occur at conferences and that are related to a quasi-legislative proceeding shall be governed by the ex parte communication disclosure requirements developed by the commission.

(C) For purposes of this section, “ex parte communications that occur at conferences” includes, but is not limited to, communications in a private setting or during meals, entertainment events, and tours, and informal discussions among conference attendees.

(7) The commission shall render its decisions based on the evidence in the record. Ex parte communications shall not be a part of the record of the proceedings.

(f) The commission may meet in a closed session to discuss administrative matters so long as no collective consensus is reached or vote taken on any matter requiring a vote of the commissioners. The commission shall, by rule, adopt and publish a definition of “administrative matters” for purposes of this section.

SEC. 6. Section 1701.2 of the Public Utilities Code is amended to read:

1701.2. If the commission pursuant to Section 1701.1 has determined that an adjudication case requires a hearing, the procedures prescribed by this section shall be applicable.

(a) The assigned commissioner or the assigned administrative law judge shall hear the case in the manner described in the scoping memo. The scoping memo shall designate whether the assigned commissioner or the assigned administrative law judge shall preside in the case.

(b) The commission shall provide by rule for peremptory challenges and challenges for cause of the administrative law judge. Challenges for cause shall include, but not be limited to, financial interests and prejudice. The rule shall provide that all parties are entitled to one peremptory challenge of the assignment of the administrative law judge in all cases. All parties are entitled to unlimited peremptory challenges in any case in which the administrative law judge has within the previous 12 months served in any capacity in an advocacy position at the commission, been employed by a regulated public utility, or has represented a party or has been an interested person in the case.

(c) The assigned commissioner or the administrative law judge shall prepare and file a decision setting forth recommendations, findings, and conclusions. The decision shall be filed with the commission and served upon all parties to the action or proceeding without undue delay, not later than 60 days after the matter has been submitted for decision. The decision of the assigned

commissioner or the administrative law judge shall become the decision of the commission if no further action is taken within 30 days. Any party may appeal the decision to the commission, provided that the appeal is made within 30 days of the issuance of the decision. The commission may itself initiate a review of the proposed decision on any grounds.

(d) Upon request made by a majority of parties, the commission shall hold an all-party conference before a quorum of commissioners, in all adjudication cases in which an appeal has been filed, at which all parties have an opportunity to be heard, unless all parties waive this requirement and a majority of commissioners concur with that waiver. The commission shall adopt rules for implementation of this requirement, which shall provide for the broadest participation by parties to the proceeding that the commission can reasonably accommodate, consistent with the commissioners' other duties and responsibilities.

(e) The commission's decision shall be supported by findings of fact on all issues material to the decision, and the findings of fact shall be based on the record developed by the assigned commissioner or the administrative law judge. A decision different from that of the assigned commissioner or the administrative law judge shall be accompanied by a written explanation of each of the changes made to the decision.

(f) Notwithstanding Section 307, an officer, employee, or agent of the commission that is personally involved in the prosecution or in the supervision of the prosecution of an adjudication case before the commission shall not participate in the decision of the case, or in the decision of any factually related adjudicatory proceeding, including participation in or advising the commission as to findings of fact, conclusions of law, or orders. An officer, employee, or agent of the commission that is personally involved in the prosecution or in the supervision of the prosecution of an adjudication case may participate in reaching a settlement of the case, but shall not participate in the decision of the commission to accept or reject the settlement, except as a witness or counsel in an open hearing or a hearing closed pursuant to subdivision (h). The Legislature finds that the commission performs both prosecutorial and adjudicatory functions in an adjudication case and declares its intent that an officer, employee, or agent of the commission, including its attorneys, may perform only one of

those functions in any adjudication case or factually related adjudicatory proceeding.

(g) (1) Ex parte communications shall be prohibited in adjudication cases.

(2) Any oral or written communications concerning procedural matters in adjudication cases between interested persons and decisionmakers, except the assigned administrative law judge, shall be prohibited.

(h) Notwithstanding any other law, the commission may meet in a closed hearing to consider the decision that is being appealed. The vote on the appeal shall be in a public meeting and shall be accompanied with an explanation of the appeal decision.

(i) Adjudication cases shall be resolved within 12 months of initiation unless the commission makes findings why that deadline cannot be met and issues an order extending that deadline. In the event that a rehearing of an adjudication case is granted, the parties shall have an opportunity for final oral argument.

(j) (1) The commission may determine that the respondent lacks, or may lack, the ability to pay potential penalties or fines or to pay restitution that may be ordered by the commission.

(2) If the commission determines that a respondent lacks, or may lack, the ability to pay, the commission may order the respondent to demonstrate, to the satisfaction of the commission, sufficient ability to pay potential penalties, fines, or restitution that may be ordered by the commission. The respondent shall demonstrate the ability to pay, or make other financial arrangements satisfactory to the commission, within seven days of the commission commencing an adjudication case. The commission may delegate to the attorney to the commission the determination of whether a sufficient showing has been made by the respondent of an ability to pay.

(3) Within seven days of the commission's determination of the respondent's ability to pay potential penalties, fines, or restitution, the respondent shall be entitled to an impartial review by an administrative law judge of the sufficiency of the showing made by the respondent of the respondent's ability to pay. The review by an administrative law judge of the ability of the respondent to pay shall become part of the record of the adjudication and is subject to the commission's consideration in its order resolving the adjudication case. The administrative law judge may enter

temporary orders modifying any financial requirement made of the respondent pending the review by the administrative law judge.

(4) A respondent that is a public utility regulated under a rate of return or rate of margin regulatory structure or that has gross annual revenues of more than one hundred million dollars (\$100,000,000) generated within California is presumed to be able to pay potential penalties or fines or to pay restitution that may be ordered by the commission, and, therefore, paragraphs (1) to (3), inclusive, do not apply to that respondent.

SEC. 7. Section 1701.3 of the Public Utilities Code is amended to read:

1701.3. If the commission pursuant to Section 1701.1 has determined that a ratesetting case requires a hearing, the procedures prescribed by this section shall be applicable.

(a) The assigned commissioner shall determine prior to the first hearing whether the commissioner or the assigned administrative law judge shall be designated as the principal hearing officer. The principal hearing officer shall be present for more than one-half of the hearing days. The decision of the principal hearing officer shall be the proposed decision.

(b) An alternate decision may be issued by the assigned commissioner or the assigned administrative law judge who is not the principal hearing officer. Any alternate decision may be filed with the commission and served upon all parties to the proceeding any time prior to issuance of a final decision by the commission, consistent with the requirements of Section 311.

(c) The commission shall establish a procedure for any party to request the presence of a commissioner at a hearing. The assigned commissioner shall be present at the closing arguments of the case.

(d) The principal hearing officer shall present the proposed decision to the full commission in a public meeting. The alternate decision, if any, shall also be presented to the full commission at that public meeting.

(e) The presentation to the full commission shall contain a record of the number of days of the hearing, the number of days that each commissioner was present, and whether the decision was completed on time.

(f) The commission shall provide by regulation for peremptory challenges and challenges for cause of the administrative law judge. Challenges for cause shall include, but not be limited to, financial

interests and prejudice. All parties shall be entitled to unlimited peremptory challenges in any case in which the administrative law judge has within the previous 12 months served in any capacity in an advocacy position at the commission, been employed by a regulated public utility, or has represented a party or has been an interested person in the case.

(g) (1) Ex parte communications are prohibited in ratesetting cases.

(A) Oral communications may be permitted by a decisionmaker if all parties are invited and given not less than three working days' notice.

(B) Written ex parte communications by any interested person may be permitted provided that copies of the communication are transmitted to all parties on the same day as the original communication. Written ex parte communications shall not be part of the record of the proceeding.

(C) The commission may establish a period during which no oral or written all-party communications may be permitted and the commission may meet in closed session during that period, which shall not in any circumstance exceed 14 days. If the commission holds the decision, it may permit all-party communications during the first half of the interval between the hold date and the date that the decision is calendared for final decision. The commission may meet in closed session for the second half of that interval.

(2) Oral communications concerning a procedural matter in ratesetting cases between interested persons and decisionmakers, except the assigned administrative law judge, are prohibited, except that an oral communication may be permitted at any time by any decisionmaker if all parties are invited and given not less than three working days' notice.

(3) Written communications concerning a procedural matter in ratesetting cases between interested persons and decisionmakers, except the assigned administrative law judge, are prohibited, except that a decisionmaker may permit a written communication by any party if copies of the communication are transmitted to all parties on the same day.

(h) Upon request made by a majority of parties, the commission shall hold an all-party conference before a quorum of commissioners, after the proposed decision is issued in all contested

ratesetting cases, at which all parties have an opportunity to be heard, unless all parties waive this requirement and a majority of commissioners concur with that waiver. The commission shall adopt rules for implementation of this requirement, which shall provide for the broadest participation by parties to the proceeding that the commission can reasonably accommodate, consistent with the commissioners' other duties and responsibilities.

(i) The commission may, in issuing its decision, adopt, modify, or set aside the proposed decision or any part of the decision based on evidence in the record. The final decision of the commission shall be issued not later than 60 days after the issuance of the proposed decision. Under extraordinary circumstances the commission may extend this date for a reasonable period. The 60-day period shall be extended for 30 days if any alternate decision is proposed pursuant to Section 311.

SEC. 8. Section 1701.4 of the Public Utilities Code is amended to read:

1701.4. If the commission pursuant to Section 1701.1 has determined that a quasi-legislative case requires a hearing, the procedures prescribed by this section shall be applicable.

(a) The assigned administrative law judge and any assigned technical advisory staff shall act as an assistant to the assigned commissioner in quasi-legislative cases. The assigned commissioner shall prepare the proposed rule or order with the assistance of the administrative law judge and any assigned technical advisory staff. The assigned commissioner shall present the proposed rule or order to the full commission in a public meeting. The report shall include the number of days of hearing and the number of days that the commissioner was present.

(b) Ex parte communications shall be permitted. Any ex parte communication shall be reported in compliance with Section 1701.6. No reporting shall be required for written ex parte communications that are transmitted to all parties on the same day as the original communication.

(c) Upon request made by a majority of parties, the commission shall hold an all-party conference before a quorum of commissioners, after the proposed decision is issued in all contested quasi-legislative cases, unless all parties waive this requirement and a majority of commissioners concur with that waiver. The commission shall adopt rules for implementation of this

requirement, which shall provide for the broadest participation by parties to the proceeding that the commission can reasonably accommodate, consistent with the commissioners' other duties and responsibilities.

(d) The commission may, in issuing its rule or order, adopt, modify, or set aside the proposed decision or any part of the rule or order. The final rule or order of the commission shall be issued not later than 60 days after the issuance of the proposed rule or order. Under extraordinary circumstances the commission may extend this date for a reasonable period. The 60-day period shall be extended for 30 days if any alternate rule or order is proposed pursuant to Section 311.

SEC. 9. Section 1701.5 of the Public Utilities Code is amended to read:

1701.5. (a) Except as specified in subdivision (b), in a ratesetting or quasi-legislative case, the commission shall resolve the issues raised in the scoping memo within 18 months of the date the proceeding is initiated, unless the commission makes a written determination that the deadline cannot be met, including findings as to the reason, and issues an order extending the deadline.

(b) Notwithstanding subdivision (a), the commission may specify in a scoping memo a resolution date later than 18 months from the date the proceeding is initiated, if that scoping memo includes specific reasons for the necessity of a later date and the commissioner assigned to the case approves the date.

SEC. 10. Section 1701.6 is added to the Public Utilities Code, to read:

1701.6. (a) The commission shall establish and maintain a communications log summarizing all oral and written ex parte communications, as defined in Section 1701.1.

(b) The communications log shall include a summary of all oral and written communications that meet the definition of an ex parte communication that occur between an interested person and any decisionmaker.

(c) Each record of a communication in the communication log shall include the date of each communication, the persons involved in the communication, and, to the extent known, any proceedings that were the subject of each communication. Ex parte communications in the summary log shall be reported no later than three working days after the communication.

(d) The communication log shall be made available to the public on the commission's Internet Web site not later than July 1, 2016.

SEC. 11. Section 1701.7 is added to the Public Utilities Code, to read:

1701.7. (a) In addition to any penalty, fine, or other punishment applicable pursuant to Article 11 (commencing with Section 2100), the commission may assess civil sanctions upon any entity or person, other than a decisionmaker or employee of the commission, who violates, fails to comply with, or procures, aids, or abets any violation of, the ex parte communication requirements of this article or those adopted by the commission pursuant to this article. The civil sanctions may include civil penalties, adverse consequences in commission proceedings, or other appropriate commission orders directed at the entity, person, or both the entity and person, committing the violation.

(b) (1) Except as provided in paragraph (2), a civil penalty assessed shall not exceed fifty thousand dollars (\$50,000) per violation. Each day of a continuing violation is a separate violation. If the violation consists of engaging in a communication that is prohibited by the ex parte communication requirements, each day that the violation is not disclosed to the commission and to parties of record in the formal proceeding in which the communication occurred shall constitute a separate violation.

(2) If the entity or person may obtain, by violating the ex parte communication requirements, financial benefits that exceed the maximum amount of civil penalty allowable pursuant to paragraph (1), the commission may impose a civil penalty up to the amount of those financial benefits.

(c) Civil penalties assessed pursuant to subdivision (b) upon entities whose rates are determined by the commission shall be in the form of credits to the customers of that entity. Civil penalties collected from other entities shall be deposited in the General Fund.

(d) In determining the appropriate civil sanctions, the commission shall consider the following factors:

(1) The severity of the violation.

(2) The conduct of the entity or person, including the level of experience of the entity or person in participating in commission proceedings and whether the entity or person knowingly violated the ex parte communication requirements.

(3) The financial resources of the entity or person.

(4) The totality of the circumstances in furtherance of the public interest.

SEC. 12. Section 1701.8 is added to the Public Utilities Code, to read:

1701.8. (a) The Attorney General may bring an enforcement action in the Superior Court for the City and County of San Francisco against a decisionmaker or employee of the commission who violates, fails to comply with, or procures, aids, or abets any violation of, the ex parte communication requirements in this article or those adopted by the commission pursuant to this article. The court shall expedite its review of the action to provide effective and timely relief.

(b) Notwithstanding Section 1759, in an enforcement action brought pursuant to this section, the court may grant appropriate relief, including disqualification of the decisionmaker from one or more proceedings and civil penalties as provided in Section 2111.

(c) In determining the appropriate relief, the court may consider the following factors:

(1) The severity of the violation.

(2) The conduct of the decisionmaker or employee, including whether the decisionmaker or employee knowingly violated the ex parte communication requirements.

(3) The financial resources of the decisionmaker or employee.

(4) The totality of the circumstances in furtherance of the public interest.

(d) The Attorney General may compromise the enforcement action subject to approval by the court.

(e) Civil penalties collected pursuant to this section shall be deposited into the Litigation Deposits Fund established pursuant to Article 9 (commencing with Section 16425) of Chapter 2 of Part 2 of Division 4 of Title 2 of the Government Code.

SEC. 13. Section 3.5 of this bill incorporates amendments to Section 308 of the Public Utilities Code proposed by both this bill and Senate Bill 48. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2016, (2) each bill amends Section 308 of the Public Utilities Code, and (3) this bill is enacted after Senate Bill 48, in which case Section 3 of this bill shall not become operative.

SEC. 14. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Approved _____, 2015

Governor